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PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/537,566

Filing Date: November 9, 2005

Applicant: Christopher P. Revill, et al.

Group Art Unit: 3616

Examiner: Karen J. Amores

Title: HYDRAULIC SUSPENSION SYSTEM

Attorney Docket: 1316K-000028/NP

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF

Sir:

In reply to the Examiner's Answer mailed August 3, 2009, please consider the following.

The Examiner, on page 6, paragraph 10, states "Heyring '098 does not directly disclose a front and rear vehicle resilient support means." This is an inaccurate statement. As discussed in our Appeal Brief on page 16, the hydraulic rams 1, 2, 3 and 4 provide full support for the vehicle's body and thus, hydraulic rams 1, 2, 3 and 4 are the resilient supporting means. Also, as discussed on page 14 of our Appeal Brief, the suspension system of Heyring '098 obviates the use of ordinary springs. Applicants'

Appeal Brief, on pages 11-15, discusses the Heyring '098 patent and the reasoning behind the supporting of the vehicle and obviating the use of ordinary springs.

The Examiner then looks at Heyring '371 to find an element (resilient supporting means) that is already disclosed in Heyring '098. Regardless of the fact that the Examiner's primary reference includes resilient supporting means (the hydraulic rams) the Examiner adds the secondary reference Heyring '371 to disclose an element of the claim (resilient supporting means) that is already disclosed in the primary reference.

The addition of Heyring '371 is not only being used to disclose an element (resilient supporting means) already disclosed in the primary reference, it is being used to go against the teaching of the primary reference. As noted above, Heyring '098 teaches that the need for ordinary springs is eliminated. A prior art reference must be considered in its entirety, i.e. as a whole, including portions that would lead away from the claimed invention. *WL Gore & Associates, Inc. v. Garlock, Inc.* 721 F2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 US 851 (1984). Here the reference Heyring '098 teaches that ordinary springs are not needed because the hydraulic rams provide the support for the vehicle. Regardless, the Examiner went to Heyring '371 to find ordinary springs 17 in the form of torsion bars and adds them to Heyring '098 to now provide a second set of supports for the vehicle.

In order to combine or modify the teachings of the prior art, to produce the claimed invention, there must be some teaching, suggestion or motivation to do so. *In re Kahn*, 441 F3d 977, 986, 78 USPQ 2d 1329, 1335 (Fed. Cir. 2006). Here there is no teaching, suggestion or motivation to combine Heyring '371 with Heyring '098. In fact,

the opposite is true. As discussed above, Heyring '098 teaches against the combination.

A statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill of the art at the time the claimed invention was made because the references relied upon teaching that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ 2d 1300 (Bd. Pat. App. & Inter. 1993). Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness KSR USPQ 2d at 1396 quoting *In re Kahn*, 441 F3d 977, 986, 78 USPQ 2d 1329, 1336 (Fed. Cir. 2006). Here, the Examiner states that the reasoning behind combining Heyring '371 with Heyring '098 is to provide independent support means capable of supporting the entire weight of the vehicle (Examiner's Answer, page 6, paragraph 10). This support means capable of supporting the entire weight of the vehicle is being added even though the entire weight of the vehicle is already supported by the hydraulic rams in Heyring '098. There is no rational underpinning to support the legal conclusion of obviousness.

The Examiner's reference to these arguments is that Heyring '098 does not explicitly state the use and purpose of lacking springs nor preclude the inclusion of springs. Heyring '098 teaches that the use of ordinary springs is unnecessary (obviates their use). Of course Heyring '098 does not discuss the use and purpose of lacking springs because it has replaced the springs with another form of vehicle resilient

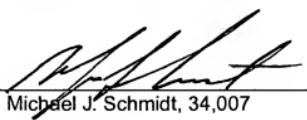
support. Springs are irrelevant because their function has been replaced by the hydraulic system which includes the load distribution unit (LDU). Heyring '098 does explicitly disclose supporting of the vehicle body by the system. Column 1, lines 29-30 states "the present invention relates to an improved construction of said load distribution unit...", the load distribution unit being the LDU used to support the vehicle body as disclosed in the earlier cases incorporated by reference. The Examiner attempts to get around this statement by stating that suspension systems with additional supporting means are well known in the art and are often used for redundancy as a fail-safe. Even though the Examiner states that this is old and well known, the Examiner is unable to cite any prior art document to support his position. Even if the Examiner were able to locate a document to support his position, he would still not be able to overcome the fact that Heyring '098 teaches that ordinary springs are unnecessary.

CONCLUSION

Applicants respectfully request the rejections of the Examiner be overturned and allowance of the pending claims be confirmed.

Respectfully submitted,

Dated: September 29, 2009

By: 
Michael J. Schmidt, 34,007

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

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